

**FILED**

**AUG 19 2008**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

#9

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK D. BURKE,  
Petitioner,

v.

WARDEN D.K. SISTO,  
Respondent.

No. C 07-2832 MMC (PR)

**ORDER OF DISMISSAL  
(Docket No. 8)**

On May 31, 2007, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 13, 2007, the Court found petitioner had failed to state cognizable claims for habeas corpus relief, and the petition was dismissed with leave to amend. Petitioner thereafter filed an amended petition. Upon review of the amended petition, the Court, by order filed May 19, 2008, found petitioner stated therein a cognizable claim that he had been denied effective assistance of counsel when his attorney advised him to plead nolo contendere to a vandalism charge; the Court directed respondent to file either an answer to the petition or a motion to dismiss.

On May 21, 2008, the Clerk of the Court mailed a copy of the Court's order to petitioner at the most recent address petitioner had provided to the Court. On June 10, 2008, the order was returned to the Court as undeliverable because petitioner was not at the address he had provided.

Pursuant to the Civil Local Rules of this district, "a party proceeding *pro se* whose

1 address changes while an action is pending must promptly file with the Court and serve upon  
2 all opposing parties a Notice of Change of Address specifying the new address.” See Civ. L.  
3 R. 3-11(a). Where mail directed to such party “has been returned to the Court as not  
4 deliverable” and “the Court fails to receive within 60 days of this return a written  
5 communication from . . . the *pro se* party indicating a current address,” the Court “may  
6 dismiss the complaint without prejudice.” See Civ. L.R. 3-11(b).

7 Here, more than sixty days have passed since petitioner’s mail was returned to the  
8 Court as undeliverable and petitioner has not notified the Court of his correct current address.  
9 Accordingly, the above-titled action is hereby DISMISSED without prejudice.<sup>1</sup>

10 This order terminates Docket No. 8.

11 The Clerk shall close the file.

12 IT IS SO ORDERED.

13 DATED:

AUG 19 2008

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MAXINE M. CHESNEY  
United States District Judge

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26 <sup>1</sup>On August 7, 2008, respondent filed a motion to dismiss the petition as barred by the  
27 statute of limitations. As the petition is subject to dismissal for the above-stated reasons,  
28 respondent’s motion is hereby DENIED, without prejudice to respondent’s filing a motion to  
dismiss on the same ground should petitioner bring another petition challenging the  
vandalism conviction at issue herein.

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK D BURKE,  
Plaintiff,

Case Number: CV07-02832 MMC

**CERTIFICATE OF SERVICE**

v.

D K SISTO, WARDEN et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 19, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Patrick D. Burke  
CMF R-101-L  
V-09946  
P.O. Box 2000  
Vacaville, CA 95696-2000

Dated: August 19, 2008

Richard W. Wieking, Clerk



By: Tracy Lucero, Deputy Clerk

**FILED**

AUG 19 2008

IN THE UNITED STATES DISTRICT COURT **RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FOR THE NORTHERN DISTRICT OF CALIFORNIA

#10

PATRICK D. BURKE,

No. CV-07-2832 MMC (PR)

Petitioner,

**JUDGMENT IN A CIVIL CASE**

v.

WARDEN D.K. SISTO,

Respondent.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS SO ORDERED AND ADJUDGED** more than sixty days have passed since petitioner's mail was returned to the Court as undeliverable and petitioner has not notified the Court of his correct current address. Accordingly, the above-titled action is hereby **DISMISSED** without prejudice.

Dated: August 19, 2008

Richard W. Wieking, Clerk

*Tracy Lucero*

By: Tracy Lucero  
Deputy Clerk

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK D BURKE,  
Plaintiff,

Case Number: CV07-02832 MMC

**CERTIFICATE OF SERVICE**

v.

D K SISTO, WARDEN et al,  
Defendant.

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Patrick D. Burke  
CMF R-101-L  
V-09946  
P.O. Box 2000  
Vacaville, CA 95696-2000

Dated: August 19, 2008

Richard W. Wieking, Clerk



By: Tracy Lucero, Deputy Clerk

OFFICE OF THE CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

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NORTHERN DIST.

SAN FRANCISCO CA 94111

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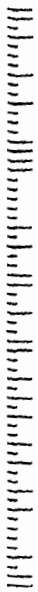
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CLERK OF DISTRICT COURT  
NORTH HAVEN, CONNECTICUT

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